

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

HERBERT DEMETRIUS MCINTOSH,)	
Petitioner,)	
)	CIVIL ACTION NO. 10-00152-KD-B
v.)	
)	CRIMINAL ACTION NO. 07-00189-KD-B
UNITED STATES OF AMERICA,)	
Respondent.)	

ORDER

This action is before the Court on the Motion to Dismiss (Doc. 152) filed by Petitioner Herbert Demetrius McIntosh (“McIntosh”). McIntosh moves to dismiss with prejudice his pending Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, representing that his counsel “has thoroughly explained any and all advantages [he] may realize in a successful 2255 petition to this Court and has also explained the possible negative consequences of a successful filing and re-trial and/or resentencing.” (*Id.* at 1). On this day in open court, McIntosh, accompanied by counsel and being advised by the Court of the consequences of a dismissal with prejudice, acknowledged understanding those consequences and affirmed his desire to dismiss his § 2255 petition with prejudice. The Government stated that it has no objection to such a dismissal.

Upon consideration, it is **ORDERED** that McIntosh’s Motion to Dismiss (Doc. 152) is **GRANTED** and that his Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (Docs. 107, 109, 114, 130) is **DISMISSED with prejudice**.¹

Judgment in accordance with this Order shall issue by separate document.

DONE and ORDERED this the **24th** day of **September 2013**.

/s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE

¹ Accordingly, McIntosh’s motion for reconsideration of the Magistrate Judge’s Order granting an evidentiary hearing (Doc. 147) is **MOOT**.